

Panaji, 17th August, 1989 (Sravana 26, 1911)

SERIES II No. 20

OFFICIAL GAZETTE

GOVERNMENT OF GOA

GOVERNMENT OF GOA

General Administration and Coordination Department

Relieving Order

No. 13/20/87-GA & C

The request of Shri G. S. Mandrekar, Jt. Secretary (Budget) to relinquish him of the charge of the post of Jt. Secretary (Budget) before completion of normal term of two years of his contract is accepted by the Government and he is relieved w.e.f. 31-7-89 (AN).

Shri N. P. S. Nagorcenkar, Accounts Adviser shall function as Jt. Secretary (Budget) in addition to his own duties w.e.f. 1-8-89 (FN) until further orders.

By order and in the name of the Governor of Goa.

A. V. Pimenta, Under Secretary (GA).

Panaji, 31st July, 1989.

Department of Personnel

Order

No. 5/17/82-PER

Resignation tendered by Shri M. S. Khan, Grade I Officer of Goa Civil Service vide his letter dated 28-4-1989 is hereby accepted with immediate effect.

By order and in the name of the Governor of Goa.

Smt. Prabha Chandran, Under Secretary (Personnel).

Panaji, 2nd August, 1989.

Home (General) Department

Order

No. 3/25/86-HD(G)

Read: (1) Government Order No. 3-12-83-HD(G), dated 9-9-1983.

(2) Letter No. RD/Pers-7/177/Misc dated 28-7-1987, from the Director General Research & Development, Ministry of Defence, Research & Development Organisation, New Delhi.

(3) Letter No. COM/VII/I/88 dated 2-5-1989, Goa Public Service Commission, Panaji-Goa.

On expiry of his deputation term as Director of Fire and Emergency Services under Government of Goa, Shri P. K. John, Chief Instructor, Defence Institute of Fire Research Ministry of Defence, the Government is pleased to appoint him on transfer as Director of Fire and Emergency Services

with effect from 6-10-1988. He shall be on probation for a period of one year.

2. This issues in consultation with the Goa Public Service Commission vide their letter No. COM/VII/I/88 dated 2-5-1989.

By order and in the name of the Governor of Goa.

A. T. Kamat, Under Secretary (Home).

Panaji, 28th July, 1989.

Education Department

Order

No. 16-26-86-EDN/4358

Government is pleased to reconstitute an Advisory Committee for Goa College of Architecture, Panaji, consisting of the following members:—

- 1) Secretary (Education) Government of Goa—Chairman.
- 2) Dr. C. Nande, Head of Department of Physics, Goa University—Nominee of Goa University.
- 3) Dr. A. R. Joshi, Reader in English, Goa University—Nominee of Goa University.
- 4) Shri Pissurelekar, Senior Architect, P.W.D., Panaji—Member.
- 5) Chief Town Planner, Town & Country Planning Deptt., Panaji—Member.
- 6) Director of Technical Education, Panaji—Member.
- 7) Director of Education, Panaji-Goa—Member.
- 8) Shri Sarto Almeida, Architect—Member.
- 9) Shri Lucio Miranda, Architect—Member.
- 10) Principal, Goa College of Architecture, Miramar, Panaji—Member Secretary.

The functions of the Committee will be as follows:—

1. To recommend and advise the Government in the matter of providing adequate infrastructural facilities to the students and the issue of construction of building on a priority basis.
2. To advise and recommend new programmes considering the requirements of the State.
3. To advise and guide the institution in matters relating to specific arrangements for placement and follow up of students for gainful occupation after completing the courses.
4. To examine and review the programmes offered by the Institution with a view to assessing their efficiency and usefulness.
5. To advise and guide the institution in matters relating to the instructional facilities, hostel facilities and recreational facilities.
6. To recommend suitable measures for further improving the functioning of the institution.
7. To perform such other functions as may be assigned by the State Council of Education or the Department of Education.

8. Any other matter for the benefit and development of the College.

RULES OF BUSINESS

- The Committee shall meet at least once a year and may meet at such other times as a meeting thereof is convened by the Member Secretary with the approval of Chairman.
- Four Members shall form a quorum for a meeting of the Committee.
- Nominated members of the Committee shall hold office for the period of the tenure of the Committee. However, a person nominated in Ex-Officio capacity shall cease to act as a member of the Committee when he leaves the office or position by virtue of which he was nominated on the Committee.

The tenure of the committee is for a period of three years.

The non-official members of the above committee will be entitled to TA/DA as admissible to the First Grade Officer of the Government at the highest rates.

By order and in the name of the Governor of Goa.

D. N. Accavade, Under Secretary (Education).

Panaji, 25th July, 1989.

Agriculture Department

Order

No. 2-4-83/AGR

Government is pleased to promote on ad-hoc basis Shri Emerico Martires, Technical Assistant working under the Directorate of Agriculture to the post of Mechanical Cultivation Officer (group 'B' gazetted) in the pay scale of Rs. 2000-3500/- with immediate effect.

The above appointment will not bestow on the promotee any claim for regular appointment and services rendered on ad-hoc basis in the grade will not count for the purpose of seniority in the grade and eligibility for promotion to the next higher grade.

3. Government is also pleased to transfer/post the Officers in the Mechanical Cultivation wing of the Directorate of Agriculture as follows with immediate effect:

Sr. No.	Name	Present posting	Station to which posted
1.	Shri Emerico Martires	Technical Asst. Ponda.	On promotion as M. C. O., Curchorem.
2.	Shri Francisco Furtado	M. C. O., Curchorem.	M. C. O., Mapusa.
3.	Shri Anant Chodankar	M. C. O., Mapusa.	M. C. O., Tonca Caranzalem.

Shri Emerico Martires should move first.

By order and in the name of the Governor of Goa.

A. P. Panvelkar, Under Secretary (Agriculture).

Panaji, 2nd August, 1989.

Public Works and Urban Development Department

Order

No. 3/25-5/87/IRRG

Government is pleased to order the promotion on ad-hoc basis of Shri C. S. Jain, Executive Engineer, Irrigation Department, presently on deputation to Soil Conservation Division of the Directorate of Agriculture to the post of Superintending Engineer, Irrigation Department in the pay scale of Rs. 3700-125-4700-150-5000 and post him in Circle

Office I (Minor Irrigation) vice Shri G. N. Kapadi, with immediate effect.

The appointment is purely on ad-hoc basis and will not bestow any claim for regular appointment and service rendered on ad-hoc basis in the grade will not count for the purpose of seniority in the grade and for eligibility for promotion to the next higher grade.

The appointment shall be initially for a period of one year.

Shri G. N. Kapadi, Superintending Engineer, Circle I (Minor Irrigation) is transferred and posted as Superintending Engineer Central Planning Organisation with immediate effect.

By order and in the name of the Governor of Goa.

D. V. Sathe, Under Secretary to the Govt. of Goa (Irrigation).

Panaji, 2nd August, 1989.

Public Health Department

Order

No. 8-34-89-II/PHD

Read: Memorandum No. 5-5-81/PHD(I)/Part dated 7-7-89.

On the recommendation of the Departmental Selection Committee the Governor of Goa is pleased to appoint Dr. Manpreet Kaur to the post of Resident Microbiologist in Goa Medical College in the pay scale of Rs. 2200-75-2800-EB-100-4000 purely on ad-hoc basis with immediate effect initially for a period of one year or till the post is filled on regular basis whichever is earlier subject to the terms and conditions stipulated in the Memorandum cited above.

The appointment shall not bestow on Dr. Kaur a claim for regular appointment and the service rendered on ad-hoc basis in the grade shall not count for the purpose of seniority in the grade and for promotion to the next higher grade.

This appointment is made against the post of Resident Microbiologist vacated by Dr. Kishore Nagvenkar.

The appointment is subject to her being declared fit by the Medical Board of Goa Medical College, Panaji and pending verification of her character and antecedents.

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Health).

Panaji, 28th July, 1989.

Order

No. 8-35-89-II/PHD

Read: Memorandum No. 5-5-81-PHD(I)/Part dated 7-7-89.

On the recommendation of the Departmental Selection Committee the Governor of Goa is pleased to appoint Dr. Premila D'Souza, to the post of Resident Pathologist in Goa Medical College in the pay scale of Rs. 2200-75-2800-EB-100-4000 purely on ad-hoc basis with immediate effect initially for a period of one year or till the post is filled on regular basis whichever is earlier subject to the terms and conditions stipulated in the Memorandum cited above.

This appointment shall not bestow on Dr. D'Souza a claim for regular appointment and the service rendered on ad-hoc basis in the grade shall not count for the purpose of seniority in the grade and for promotion to the next higher grade.

The appointment is made against the post of Resident Pathologist vacated by Dr. (Mrs.) Smita Naik.

This appointment is subject to her being declared fit by the Medical Board of Goa Medical College, Panaji and pending verification of her character and antecedents.

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Health).

Panaji, 28th July, 1989.

Order

No. 10/5/88-I/PHD

Read. Government order No. 10/5/88-I/PHD dated 31-7-89.

The following transfer of the officers under the Directorate of Health Services are hereby ordered with immediate effect:

Sr. No.	Name of the Officer, designation present posting	Designation and place of transfer
1	2	3
1.	Dr. (Mrs.) Rati Kamat, Jr. Ophthalmic Surgeon Hospicio Hospital, Margao.	Jr. Ophthalmic Surgeon, P. H. C., Canacona against the post transferres from Asilo Hospital, Mapusa vide order No. 10/5/88-I/PHD dated 31-7-89.
2.	Dr. (Mrs.) Herlia Furtado Teles, Jr. Ophthalmic Surgeon, Cottage Hospital Chicalim, Vasco.	Jr. Ophthalmic Surgeon. Hospicio Hospital, Margao vice Dr. (Mrs.) Rati Kamat, transferred.

Dr. (Mrs.) Herlia Furtado Teles shall also attend O.P.D. at Chicalim, Cottage Hospital, Chicalim on Tuesday, Thursday and Saturday.

Dr. (Mrs.) Herlia Furtado Teles will not be entitled for transferred T. A.

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Health).

Panaji, 31st July, 1989.

Order

No. 8/56/87-I/PHD

Whereas an offer of appointment was given to Dr. Dominiguito John D'Souza vide memorandum No. 7/18/87-I/PHD dated 5th October, 1987 asking his willingness whether he would like to take up the post on temporary basis on the terms and conditions mentioned in the said memorandum which included, among others, that the period of probation would be of 2 years;

And Whereas the said Dr. D'Souza vide his letter dated 20-10-87 accepted the appointment on the terms and conditions indicated in the said memorandum dated the 5th October, 1987;

And Whereas, accordingly, Dr. D'Souza was appointed to the post of Jr. Pathologist vide order No. 7/18/87-I/PHD dated 4-11-1987 as Jr. Pathologist w.e.f. 27-8-1987;

And Whereas during this probation period his conduct and performance has been found to be unsatisfactory;

Now, therefore, Government is pleased to dispense with his services with effect from the date of issue of this order.

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Health).

Panaji, 1st August, 1989.

Order

No. 7/2/88-I/PHD

On the recommendation of the Local Selection Committee, the following doctors are appointed on ad-hoc basis to the post of Medical Officers/Rural Medical Officers/Assistant Medical Officers in the pay scale of Rs. 2200-75-2800-EB-100-4000 plus N.P.A. Rs. 600/- under the Directorate of Health Services and posted at the places shown against them with immediate effect for a period of one year or till the posts are filled on regular basis whichever is earlier on terms and conditions contained in the Government Memoranda No.

7/2/88-I/PHD dated 10-4-1989 in respect of candidates at Sr. No. 1 and 2 and the other dated 11-4-89 in respect of Sr. No. 3.

Sr. No.	Name of the doctor	Designation & place of postings
1.	Dr. Maria Arlinda G. P. Da Costa, House No: E-16, Arradim Parra-Bardez-Goa.	Medical Officer, Asilo Hospital, Mapusa against the vacant post caused due to resignation of Dr. (Miss) Imelda Monteiro.
2.	Dr. Ulhas Sawkar, Sawkar Villa, E-161 Housing Board Colony Mapusa-Goa-403 507.	Medical Officer, P.H.C. Pernem vice Dn. (Mrs.) Maria O. Sequeira transferred vide order dated 31-3-1989.
3.	Dr. Mary Patricia D'Sylva Sequeira, La Marvel Colony Raj Bhavan Road, Dona Paula-Goa.	Assistant Medical Officer, Cottage Hospital, Chicalim, Vasco against vacant post.

The appointments will not bestow on the officers a claim for regular appointment and the services rendered on ad-hoc basis in the grade would not count for the purpose of seniority in that grade or eligibility for promotion to the next higher grade.

These doctors have been medically examined and found fit by the Medical Board. The appointments are subject to the verification of the character and antecedents.

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Health).

Panaji, 1st August, 1989.

Department of Labour

Order

No. 28/35/89-ILD

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Shri Gururaja Industries, Sancoale-Goa and their workman Shri Premanand Shirodkar, Turner/Machinist, represented by the Goa Trade and Commercial Workers' Union in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa, Daman and Diu at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

"Whether the action of the management of M/s. Shri Gururaja Industries, Sancoale Industrial Estate, Zuari-nagar-Goa, in terminating the services of Shri Premanand Shirodkar, Turner/Machinist with effect from 9-2-1989 is legal and justified?

If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 26th July, 1989.

Order

No. 28/36/89-ILD

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Zuari Marine Industries Pvt. Limited, Sancoale Industrial Estate, and their workman Shri John Dias, Helper, represented by the Goa Trade and Commercial Workers' Union in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa, Daman and Diu at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

"Whether the action of the management of M/s. Zuari Marine Industries Private Limited, Sancoale-Goa, in terminating the services of Shri John Dias, Helper, with effect from 1-12-1988 is legal and justified?"

If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 26th July, 1989.

Order

No. 28/2/88-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 31st January, 1989.

**IN THE LABOUR COURT
GOVERNMENT OF GOA
PANAJI GOA**

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Appl. No. LCC/23/88

Mrs. Amba Narottam Naik, — Applicant
V/s.

M/s. Madkai Gram Education Society — Opponent

Applicant represented by Adv. P. J. Kamat,

Opponent represented by Adv. A. Nigalye.

Panaji, dated: 5-1-1989

JUDGEMENT

The applicant who worked as L.D.C. with the opponent school filed this claim petition claiming certain dues from the management of the school. Earlier she had filed similar claim petition namely LCC/36/84 for the same claim but she had to withdraw the claim petition on technical ground. I passed the following order in the matter on 30-6-1988:

"Permission is granted to applicant/Workman to withdraw her application filed in this Court on 10th December, 1984 and the applicant/Workman Mrs. Amba Narottam Naik is permitted to file a fresh application under sub-section 2 of Section 33C of the Industrial Dispute Act, 1947, on the same cause of action. In the circumstances of the case the parties are directed to bear their own costs".

Before the withdrawal, substantial oral evidence was recorded in the case and documents were produced. On

common consent the evidence in the previous case was agreed to be read as evidence in this case. So also the parties were at liberty to lead additional evidence if any. Accordingly the Secretary of the opponent society by name Arvind Kamat produced two letters Exh. E-4 and Exh. E-5 and the tapal book Exh. E-6 wherein the Party No. 1 had signed on 13-3-1984 and 1-3-1984 about her having received the originals of the two letters Exh. E-4 and Exh. E-5. Besides this no other evidence was led in the case and the applicant did not enter the witness box but she reiterated the claim which she has made in the annexure to her original application u/s. 33C(2) of the I.D.A. The claim made by her is as follows:

1. Gratuity at the rate of 15 days wages for each year of completed service. Rs. 2,664.17
2. Balance leave wages earned from 29-10-1979 to 26-11-1979. Rs. 496.00
3. Provident Fund standing to her credit. Rs. 6,101.13
National Saving Certificate Amount.
4. Compound interest at the rate of 9 per cent per annum from the date the gratuity is payable till the actually recovery. Rs. 1,265.58 upto 28-5-84
5. Costs.

I shall consider the claim, item-wise. I shall first deal with item No. 2 regarding the Balance leave. Admittedly the applicant was on leave from June 1979 and she continued to be on leave till 6-10-79 the day on which she tendered her resignation. It is apparently clear that since June, 1979 she had not rejoined the services though she was in service for about nine years. It has to be seen as to what was the effect of her letter of resignation which is at Exh. W-1. What she states therein is that she was on leave from June, 1979, was not in a position to continue service and she should be granted remaining earned leave and half pay leave, preparatory to her retirement. It is seen from the Tenore of her letter that she did not much know about the correct position of leave but she was firm about her resignation because she informed the management that this letter be treated as her resignation letter. It was then upto the management to act on this letter. The Secretary had forwarded this application to the Headmaster asking him to find out whether notice of 3 months was necessary. No specific order either granting or rejecting the resignation is passed there on. Now, the management however have come forward with a case that the resignation was accepted retrospectively w.e.f. June, 1979. The management was unable to show how this could be done. Anyhow the resignation was tendered and there was a stalemate. It is now to be seen what is the correct position so far as the leave standing to the credit of the applicant and requirement of three months notice are concerned.

On the showing of the applicant herself leave for 28 days — Earned Leave was to her credit. In normal circumstances she was entitled to leave encashment for this period. However, this is not the position about the half pay leave. According to her half pay leave for six months was to her credit and notionally she retired sometime in March, 1980, considering the half pay leave of 160 days. This claim is wrong and erronic. Half pay leave is not similar to earned leave for which a servant is entitled to encash them. There is no rule providing for encashment of half pay leave because half pay leave can be granted in extraordinary circumstances such as long sickness and similar compelling grounds. Hence, the only question is about the earned leave for 28 days but the applicant has tendered resignation without giving 3 months notice as required in Grant in Aid Code for Secondary Schools. My attention is invited to Rule No. 7 at page 34 (Rule No. 74 Sub Rule No. 7) which clearly lays down that no permanent employee shall leave service without giving 3 calendar months' notice or without paying 3 calendar months' salary in lieu of notice to the Management. In either case, the notice should not be given during the vacation or as to cover any part of vacation or within a month after vacation. Admittedly the applicant was paid the salary till the end of Sept. '79 and strictly speaking she should have rejoined the duty after the expiry of her leave in Oct. '79 to give a notice of 3 months and to work for the remaining period after calculating the earned leave. According to the management she has taken excessive salary for 13 days. There is no substance in this claim of the management because no remarks are passed on the resignation letter. It is true that the applicant filed application Exh E-7 on 8-11-79 offering to confirm her resignation and requesting the management to know the amount which she was supposed to refund to the school. This shows that she was aware

of the position that after her resignation was accepted she was liable to pay something to the management. The endorsement therein shows that she was relieved according to her request. It appears that thereafter the matter was taken to the Education Dept. and the letter of the Accounts Officer Exb; E-3 shows that the management had claim over paid salary of 13 days and notice pay of 3 months but the Directorate of Education had asked the management to settle the matter. Any way it was not done and broadly it has to be taken that the management was duly notified about the resignation and the management accepted it without insisting upon three months notice. It appears the management set up the plea as a rejoinder because the applicant claimed leave salary without giving proper notice. I feel that it would be in the fitness of things to leave the matter there only by disallowing the claim both of the applicant and the management by treating the letter Exh W-1 as a resignation simpliciter. I therefore disallow the claim for leave encashment for 28 days made by the applicant.

Adverting then to items 1 and 4 regarding gratuity and claim for compound interest thereon I feel that this claim is similarly liable to be rejected because of the direct Supreme Court authority on this point reported in 1980 LAB. L. C. 1084 = AIR 1979 Supreme Court page 1981. Therein the Supreme Court have made the following observations:

"The payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. Parliament intended that proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other Act. Therefore, the applications filed by the employees under Section 33-C (2) of the Industrial Disputes Act did not lie, and Labour Court has no jurisdiction to entertain and dispose of them".

The above authority is clear to the point and the Labour Court considering the application u/s 33 C (2) has no jurisdiction to consider the question of gratuity which is covered by the payment of gratuity act. I therefore, hold that I have no jurisdiction to grant the applicant the relief as regards the gratuity amount or compound interest thereon. The applicant is at liberty to prosecute her claim before the competent authority under the payment of gratuity act and this order may not come in her way and this order would not operate as res-judicata.

This is how I have disallowed applicant's claim for leave encashment, gratuity and interest thereon and what remains to be considered is the payment of PF accumulations. It is almost a common ground that the applicant is entitled to PF accumulations, a part of which is invested in the National Saving Certificate. It appears that the management of the Opponent school had withheld the payment for two reasons namely accountability of the applicant for the excess payment allegedly received by her and liability to pay three months' salary in lieu of notice and the loss of three NSC certificate and the non-cooperation of the applicant in revalidating them by signing the forms sent by the management to her. So rightly or wrongly the payment was withheld by the management. It appears that the management also laboured under the wrong impression that the interest after six months was not admissible to the applicant and that the same has to be deposited into Govt. treasury. It is the question of payment of Provident Fund and the applicant has the right over the PF accumulation and the management is bound to grant the same to her without raising any objections. I therefore allow the petition partly and pass the following Order:

ORDER

The claim of the applicant for leave encashment, gratuity and interest thereon stands rejected. However, her claim for PF accumulation is granted. The management of Madkai Gram Education Society, Post Office Mardol, Marcel-Goa are directed to pay to the applicant Mrs. Amba Narottam Naik of Adan Wada, Marcalim an amount of Rs. 6,101-13 (Rs. six thousand one hundred and one and thirteen paise only) together with an interest thereon with admissible rate and while making this payment they should properly appropriate the amount receivable under the National Saving Certificate after due validation. The applicant is directed to cooperate with the management by signing the necessary

papers required for the revalidation of the National Saving Certificates.

Under the circumstance the parties are directed to bear their own costs.

S. V. Nevagi
Presiding Officer
Labour Court

Order

No. 28/23/85-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 19th April, 1989.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/33/85

Shri John Rodrigues

— Party I

V/s.

M/s. Goa Shipyard Ltd.

— Party II

Workman represented by Shri Subhas Naik.

Employer represented by Adv. P. J. Kamat.

Panaji, dated 30-3-1989.

CONSENT AWARD

This is a reference made by the Government of Goa by its order No. 28/23/85-ILD dated July 3, 1985 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. Goa Shipyard Limited, Vasco-da-Gama, Goa, in terminating the services of Shri John Rodrigues, Mazdoor, with effect from 13-11-1982 is legal and justified.

If not, to what relief the workman is entitled to?"

Much before the above Govt. reference under Section 10(1)(d) of the act; the management of Party II have filed an application under section 33(2)(b) of the Act, seeking approval of its order of the termination from this Tribunal and that application was numbered as IT/61/82. My predecessor by a speaking order dated 27-2-1984 refused to approve of the dismissal order passed against the workman Party I. Thereafter the present matter came up before me for hearing and I had to decide the question whether the order of my Predecessor operated as a res-judicate and whether the present reference under section 10(1)(d) of the act is sustainable in law or otherwise. This point was heard by me as a preliminary issue and by my order dated 15-6-1988 I held that the powers of the Tribunal are wider u/s 10(1)(d) of the act and than the matter u/s 33(2)(b) of the act. Hence after holding that the finding in IT/61/82 does not operate as res-judicate and as the matter of the termination of services is very much open for consideration, in the interest of just I directed that the parties can lead evidence on this point and the matter was posted for hearing.

Today the parties appeared before me and presented the memo of settlement. As per the terms of the settlement the parties had settled the matter as regards the termination of the service and this Tribunal is to pass a consent Award. Hence the following Order.

ORDER

As per condition No. 1 of the memo of settlement it is hereby declared that the termination of the services of Party I Shri John Rodrigues, Mazdoor w.e.f. 13-11-1982 is an order of retrenchment and this retrenchment shall be effected from 31-3-1989. Consequently, there is no question of holding whether the order of termination is just, legal or otherwise.

By way of relief the Party I Workman Shri John Rodrigues will be entitled to receive an amount of Rs. 1,35,536-01 (Rupees one lakh thirty five thousand five hundred thirty six and paise one only) towards back wages upto 31-3-1989, gratuity, retrenchment compensation, ex-gratia, leave encashment at the permissible limit and bonus upto the year 1987-88. Out of the amount an amount of Rs. 15,655-26 is deductible by the employer in view of the payment of wages already made at the orders of the High Court. Additionally, an amount of Rs. 4,748 is deductible towards Provident Fund and an amount equal to 2.25% towards contribution of Employees State Insurance as applicable and the notice pay which has been already paid at the time of the termination.

The Party I Workman will be entitled to the bonus for the year 1988-89 as and when the same is declared by the Party II Company.

The money to be payable to the workman as per the above declaration shall be paid on or before 30-4-1989 by issuing a cheque which shall be deposited with Shri Subhas Naik, representative of the workman, after obtaining a stamped receipt.

In view of the above payment being made to the workman, the workman John Rodrigues shall have no right to claim re-instatement in the service and he shall have no other claim of whatsoever nature against Party II Company and by virtue of this consent award all these claims against Party II Company are fully and finally settled.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the Award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal

Order

No. 28/2/88-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 2nd June, 1989.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Reference No. IT/10/79

Workmen	Party I
V/s.	
M/s. Central Printing Press	Party II
Workmen represented by Adv. H. R. Bharné & Shri N. J. Rebello.	
Employer represented by Shri P. K. Lele.	

Panaji, Dated 28-4-1989

AWARD

This is a reference made by the Government of Goa, by its order No. ILD/373/79 dated 18th May, 1979, with an annexure scheduled thereto which reads as follows:

SCHEDULE

"Whether the rejection of following demands of the workmen of M/s. Central Printing Press, Panaji, are justified?

1. Categorisation of workers into three groups and demand for scales as mentioned against each category:

a) Supervisors — 200-10-250-15-340-20-425.

b) Compositor, Binder, Printer, Clerk — 150-8-190-10-240-15-315.

c) Baller, Perforator, Distributor, Peon — 100-6-130-9-175-12-235.

2. Demand for applicability of the above scales with retrospective effect from 31-12-1977.

3. Demand for D.A. of the following rates:

a) for the first Rs. 100 in basic pay — Rs. 60/-.

b) for the second Rs. 100 in basic pay — Rs. 50/-.

c) for the third Rs. 100 in basic pay — Rs. 40/-.

4. Demand for V.D.A. at the rate of Rs. 100 per month (with 1949-100 as base)

The demand for applicability of D.A. and V.D.A. is with effect from 1-1-1978.

If the answer be in the negative, to what relief if any, are the aforementioned workmen entitled to?"

A careful survey of the above Government reference will go to show that the News Paper and Press Employees Union also representing the Central Printing Press, Panaji, Goa had made out three positive demands in the charter of demands namely (i) Categorisation of the workmen into 3 categories namely (a) Supervisors (b) Compositor, Binder, Printer, Clerk (c) Baller, Perforator, Distributor and Peon and for these three categories they had stated the revised scale starting at (a) Rs. 200 per month (b) Rs. 150 per month (c) Rs. 100 per month. Similarly they had demanded D.A. for the three categories @ Rs. 60 p.m. (b) Rs. 50 p.m. (c) Rs. 40 p.m. so also on the basis of index at 1949 × 100 they had asked for V.D.A. w.e.f. 1-1-1978. These were the three demands made by the Union on behalf of the workmen namely Categorisation of the workmen, revised pay for them, revised D.A. and revised V.D.A.

On receipt of the above government reference and after the matter was registered in this office, notices were issued to the parties and the Gen. Secretary of News Paper and Press Employees Union, Betim, Goa has filed the claim statement on behalf of the workmen of Central Printing Press on 7-7-1980. In this claim statement he has given the brief history of the dispute that the party II, Central Printing Press namely the employer was stated to be functioning for more than 40 years and its machinery was as old as the press itself. The Union had made a grievance that there was no proper maintenance of the machinery and the same was in a very dilapidated condition. According to the Union the employers did not want to spend anything on the machinery as well as on the press itself. This attitude of the employer was termed by the Union as an attempt to get money at any cost and to exploit the workmen to their fullest, contentment, and to exploit the machinery without spending anything on its maintenance. This sort of careless attitude the employer had not only affected the machinery and press but with the workmen as well. So the workmen who were working for many years were paid inadequately and one of them by name Inacio Fernandes who was working for more than 30 years was paid a mere Rs. 200/- p.m. as salary.

This being the position the workmen decided to unite themselves and enrolled as members of the Newspaper and Press Employees Union which represented the cause of workmen in the press industry in Goa. After the workmen of Central Printing Press enrolled as members of the Union, the Union drew up a charter of demands for the workmen and sent the same to the employer for consideration. The employer failed to reply to the demand and on the contrary started a reign of terror by victimising and harassing the workmen for the simple reason that they had joined the Union. This is how after reiterating the same categories of demands the Union demanded that the revised salary and D.A. and V.D.A. should be made effective from 1-1-1978 and according to them the demands were justified in the circumstances then prevailing and they had no other way but to press for the demands in view of the trend of rising prices. Thereafter they have given the details justifying the demands in the three categories and according to them the financial position of the employers i.e. all partners was very sound and they were highly placed in the Society and as a matter of fact were not dependant on the income of the Press. According to them the family of the partners which was leading a luxurious life had no desire nor intention to consider the just and proper demands of the workmen and the Union had claimed that the charter of demands being just and proper should be considered and granted by the Tribunal.

As against this the Partner of Party II, Press Mrs. V. R. Gaitonde filed her written statement dated 16th July, 1980 containing interalia that the Union or its office bearers did

not take trouble to appear before the Labour Commissioner during the course of conciliation proceedings. While accepting that the machinery of the Press are old she had reiterated that they were then in a good running condition. According to her this is a dispute of minimum wages and their case regarding Minimum Wages Act had not been finalised then. According to them they had no objection to grant the minimum wages after the decision regarding Minimum wages as per the M.W.A. was received. According to her even as per the provisions of the M.W.A. the wages of the workers would at the most be Rs. 260/- per month and the Union on the contrary had given a charter of demands claiming higher wages than Rs. 260/- p.m. Hence according to her unless the dispute as regards the minimum wages was solved there was no scope for considering the charter of demands at that juncture. About the categorisation of the workers she states that they were already categorised and the workmen of the three categories would be given the wages according to the M.W. Act. About the demand for D.A. and V.D.A. she states that the same could not be considered then unless the question of minimum wages had not been finalised by the Court. According to her for minimum wages the workers were to be either skilled or un-skilled and the workmen had failed to pass through the test and thereby they proved themselves as un-skilled workers. On 2nd March '78 the test of workers for norms of work was submitted to the Labour Commissioner. Thereafter for atleast 5 to 6 hearings the union leaders remained absent and the then Labour Commissioner by name Lalchandani closed down the case in presence of Party II employer. The management claims that the press ultimately was being run by two partners who could not run the same because of loss and the income tax certificate would indicate the same. According to them the Press was not making huge profits as adumbrated by the Union. This is the sum and substance of the written statement of the Press. Thereafter the rejoinder was filed by the Union on 29th July, 1980 and while contraverting the statements in the written statement the Union has maintained that the workers who are honest and hard working had kept the Press in a running condition and the family of the employer wanted to exploit the workmen by creating some deed of partnership suitable to them. According to them the management had even refused to pay the minimum wages prescribed by Goa Government to the Press Workers, then. According to them the so called test conducted by the management was just to satisfy the whims of the employers who themselves did not know how to conduct the test. Lastly it is submitted in the rejoinder that the management was making huge profits but they did not keep proper accounts and often bills were issued on the letter heads which were not accountable and this was being done to cheat the Sales Tax Authorities besides cheating the workmen. According to them the management had even given the threat of closing down the Unit in order to frighten the workmen. With these pleadings my Predecessor framed the following issues dated 18-8-1980.

ISSUES

1. Do the EE/P II prove that the rejection of the following demands of their WW/P I is justified and if not, to what relief or reliefs are entitled to?

(1) Categorisation of the Workers into three Groups and Demand for Scales as mentioned against each Category:

- a) Supervisors — 200-10-250-15-340-20-425.
- b) Compositor, Binder, Printers, Clerk — 150-8-190-10-240-15-315.
- c) Baller, Perforator, Distributor, Peon — 100-6-130-9-175-12-235.

2. Demand for applicability of the above Scales w.e.f. 31-12-1977.

3. Demand for D.A. w.e.f. 1-1-1978 at the following rates:

- a) For the first Rs. 100 in basic pay — Rs. 60/-.
- b) For the second Rs. 100 in basic pay — Rs. 50/-.
- c) For the third Rs. 100 in basic pay — Rs. 40/-.

4. Demand for V.D.A. w.e.f. 1-1-1978 at the rate of Rs. 100 per month (with 1949=100) as base.

If the answer be in the negative, to what relief or reliefs if any, are the aforementioned workmen entitled to?"

- (2) Do the WW/PI prove that their Wage have been almost stagnant during their service time?
- (3) Do the WW/PI prove that the above Demands are reasonable and fair compared to what the other similar establishments pay to their Workers in this Territory and elsewhere?
- (4) Do the WW/PI prove that nothing has been done by the EE/PII compensate the rise in the cost of living and that the wages paid are not linked up with the Consumer Price Index for the Working Class for 1977?
- (5) Do the WW/PI prove that the D.A. and V.D.A. should be revised every 6 months and to what extent?
- (6) Does the WW/PI prove that the Fitment proposed at page 8 of their claim statement is correct?
- (7) Do the WW/PI prove that the financial position of the EE/PII is sound and they have been making huge profits though they do not keep proper account?
- (8) Do the EE/PII prove that they have been paying the Minimum Wages prescribed by Law?

Thereafter more issues were added to the above issues by my Predecessor reading thus:

ADDITIONAL ISSUES

- (1) Does Employer/Party II prove that they do not have capacity to pay.
 1. Scales of pay.
 2. Dearness Allowance.
 3. Variable Dearness Allowance as demanded by the workmen.
- (2) Does the Employer Party II prove that demand for V.D.A. as stated in the Schedule of order of reference is vague and as such beyond the jurisdiction of the Hon. Tribunal?
- (3) Does the Employer Party II prove that they do not have financial capacity to give retrospective effect to the demands of scales of pay, D.A. & V.D.A.?

The evidence of oldest of the workman by name Inacio Fernandes then 60 years old on 8th August, 1983 is recorded and he has deposed about the justification of the demands made in the charter of demands and has also given some details of the salary being drawn by the workmen. He was then getting Rs. 265/- p.m. The Compositor Gurudas Naik was getting Rs. 265/- p.m. Kiran Naik Rs. 400/- p.m. According to him the management wanted him to leave the membership of the Union. Another workman by name Gurudas Naik is examined on 20-12-83 and according to him he was drawing Rs. 265/- per month while Kiran was drawing Rs. 425/- p.m. Kiran was junior to him by 4 years. Kiran Naik is examined on 13-8-84 and he stated that his salary

was Rs. 425/- p.m. I am referring to the statements of these three workmen because ultimately the points are being urged before me on behalf of these workmen only. As against the evidence of the three workmen, evidence of one of the two partners by name Pandurang Vishwanath Gaitonde was recorded on 24-9-1984 and he was cross examined from time to time. The following points are made out by him: (i) His father started the Press in 1945 and till 1971 his father and uncle were looking after the Press. After the death of his Uncle in 1971 the Press was managed by a Partnership firm, his father and some of his brothers being partners. His father died in 1976 and a new partnership was formed with his mother as the main partner and other brothers as the partners. According to him the Press was actually managed by his brother Subhas and sister-in-law Vijaya who has incidentally filed the written statement in this case. In 1978 Subhas joined the services and Vijaya alone started managing the Press. Till 1981 this witness was working in Bombay and he came to Goa and started looking after the management of the Press at the request of his sister-in-law, even though he was mainly carrying the business of electrical contracts. (ii) About the position of machinery there were 3 printing machines, one cutting machine and one perforating machine and the types for all these machines were 150 Kgs. in volume, which were not sufficient for the Printing Press. (iii) He gives details about the work in the press. He has then produced a copy of the Govt. Gazette Exb. E-1 showing the minimum wages prescribed by the Government under the Minimum Wages Act and he states that he was paying the Compositor Rs. 450/- the semi-skilled worker Rs. 275/- p.m. and he was making the payments as per the Gazette dated 13-10-83 wherein the wages of the semi-skilled workers are mentioned. He then says that out of the three workmen two are un-skilled and only one is a skilled worker and as such they cannot be placed in the same scale of pay or category. He further states in examination in chief itself that he produced the original statement prepared by him which shows the total liability which the Press might have to bear if the wages as demanded by the workmen were paid. So far as these 3 workmen are concerned he says that the total liability up to December, 1984 in respect of the three workers would be Rs. 51,417.50.

He has given the break up of figures yearwise of the liability in respect of the three workmen as below:

1978 — Rs. 5,265.00	1979 — Rs. 5,881.50
1980 — Rs. 6,930.00	1981 — Rs. 8,275.50
1982 — Rs. 8,131.50	1983 — Rs. 8,207.00
1984 — Rs. 8,727.00	

These figures included the basic pay, D.A. & V.D.A. He then states that the Press would not be in a position to bear this additional financial burden and to substantiate this he produced the balance sheet, the chart is at Exb. E-4.

In the adjourned deposition he states that while working out the figures from 1978 onwards he has placed Kiran Naik the Compositor at basic salary of Rs. 150/- p.m. and he had added Rs. 8 for every subsequent year. According to him the D.A. basis on the wages of Rs. 150/- the dearness would work out at Rs. 60/- for first Rs. 100/- and for balance of Rs. 50/- the same works out at Rs. 25/-. Regarding V.D.A. with the All India Cost of Price Index of Rs. 100/- in 1949 the V.D.A. for 360 points has been worked out by the Union at Rs. 115/-. He has worked out the figures of All India Price Index on the basis of 6 monthly averages. In his cross examination he states that as per the appointment letter Exb. W-5 the workmen was appointed as a Printer w.e.f. June 1968 at a total salary of Rs. 230/- p.m. The letters of appointment which were almost identical were issued to the 3 workmen. He states that he took over the management of the Press in August, 1980 and he was working

out the profits and loss accounts and he has produced the accounts which were prepared for the purpose of Sales Tax assessment. All these questions are asked to him to pin point the financial position of the Press.

All the above evidence was recorded before my Predecessor and the only evidence recorded before me after a lapse of about 2 years is that of Subhas Gaitonde on 9-12-1987. The main statement made by him is that the Press has stopped working since January, 1987. He further states that his family wanted to dispose off the old machinery and the necessary advertisement was given in the daily issue of the Navhind Times of January, 1987 (copy produced at Exb. E-5). The important statement made by him is that the 3 workmen were the only workmen who were working in the Press at the time of the closure. So far they have sold two machines. He has now taken a service in Valentine Ship Service because he could not run the Press. About his statement that the Press is closed in January, 1987 it is suggested to him that even now a workman by name Diogo Fernandes is still working in the Press. There is no evidence adduced on behalf of the workmen regarding this. So this suggestion carries no weight. This is the position of the evidence both oral and documentary recorded in this case, and I shall now go on scanning and analysing the points which survive for consideration.

The basic aspect which predominantly comes forward for consideration is the important aspect that the original industrial dispute raised by the Union way back in 1978-79 does not survive for consideration. Consequently, the industrial dispute which was mainly the charter of demands for the placement of the workmen into 3 categories, revision of their wages and payment of D.A. & V.D.A. does not survive for consideration in view of the closure of the Unit in January, 1987, as stated by Subhas Gaitonde and almost conceded to on behalf of the workmen. The question then is what is to be done in this matter when there are changed circumstances and the original industrial dispute does not subsist in the form as it was referred to this Tribunal under the Government reference. Shri Rebello the learned counsel appearing for Party I is not representing the Union i.e. the original Party I, but he is holding brief for the three workmen namely Inacio Fernandes, Binder, Gurudas Naik, Printer and Kiran Naik, Compositor. Throughout his submissions made before me at the bar he reiterated the points that in view of the closure of the Unit in January, 1987 what the Tribunal should do is to consider the claim for the difference of wages in respect of these three workmen from 15-11-1978 to January, 1987 and in order to facilitate the calculations on this point he has produced a chart which is meticulously prepared by him.

Adverting to the position of the above mentioned three workmen I am called upon to consider their individual case for the revision of their scales. As a matter of fact the original industrial dispute in the form of charter of demands does not exist because the Unit is closed in January, 1987 and what is claimed before me now by Shri Rebello on behalf of Party I/Workmen is that the case of three workmen who are the workmen in Category 'B' namely: Inacio Fernandes, Binder, Gurudas Naik, Printer and Kiran Naik, Compositor be considered and that too for the difference of wages for the period between 15-11-1978 to January, 1987 and in this regard he has submitted a chart dated 16-4-1988. In this chart he has given three figures namely the amount due to these three workmen, the amount actually paid to these workmen by the management and difference of pay which the workmen are to receive. This is how the dispute has come down to a very narrow compass and I have now to see whether this request should be considered when the main industrial dispute namely the charter of demands does not survive for consideration. I am inclined to consider

this request mainly because since 1978 (eleven) 11 precious years have elapsed. No substantial rise was received by the workmen because the matter of charter of demands was pending consideration and lastly as the old Printing Press having the old printing machinery could not run in a profitable manner was closed down in January, 1987 which is a common factor which is admitted on behalf of both parties. It would be unjust and improper to turn down the workmen asking them to go for another litigation claiming for difference of pay after the lapse of 11 years. This court can take an equitable view of the matter and see what best reliefs can be awarded to the three workmen whose case is being canvassed before me on behalf of their Labour Consultant I am inclined to consider this aspect for the main reason that the management of Party II throughout their pleadings have reiterated that they have no objection to pay the minimum wages as prescribed by the management but they were unable to do so in 1978 or at the time of filing written statement because the matter of fixation of minimum wages was pending consideration with the Government.

Now the position has changed considerably and on the showing of the management itself the Government first fixed the Minimum Wages w.e.f. 1st January, '77 for the 'B' category workmen and w.e.f. 16-12-76 their minimum wages were fixed at Rs. 260/- p.m. There was a second notification issued on 13-10-83 and the minimum wages of the 'B' category workmen were fixed at Rs. 416/- p.m. There was then 3rd notification dated 1-5-86 under which the minimum wages for the 'B' category workmen were fixed at Rs. 468/- p.m. The management of the Party II, Press has no objection to give these minimum wages to the workmen and they are prepared to pay the difference of wages to the workmen as per the government notification regarding the minimum wages. As I find that the charter of demands do not survive for consideration atleast the difference of wages as per the M. W. Act should be awarded to these three workmen falling in Category 'B'. Hence while answering the above issues I hold that the charter of demands do not survive for consideration in view of the closure of the Unit but by way of relief the three workmen whose case is canvassed before me are entitled to the difference of wages. I therefore pass the following order:

ORDER

The Unit of the Press of the Party II having stopped working from January, 1987 the question of considering the charter of demands of the workmen and the workmen in Category 'A' and 'C' does not survive for consideration.

However, the three workmen of Category 'B' namely Inacio Fernandes - Binder, Gurudas Naik - Printer and Kiran Naik - Compositor are granted the relief by way of difference

in wages as per the fixation of the Minimum Wages by the Government under the three notifications as detailed below:

1. Notification dated 1st Jan., 1977 fixing the Minimum Wages at Rs. 260/- p.m.
2. Notification dated 30th October, 1983 fixing the Minimum Wages at Rs. 416/- p.m. and
3. Notification dated 1-5-86 fixing the Minimum Wages at Rs. 468/- p.m.

The three workmen falling in 'B' Category shall be paid the difference of salary according to the Minimum Wages fixed by the notifications from 1st January, 1977 till January, '87. The wages already paid to these workmen should be taken into consideration while paying them the difference of wages and for this purpose the chart presented on behalf of the workmen dated 16-4-88 should be taken into consideration.

The difference of wages as stated above should be worked out within these two months from today and the Party II do pay the difference of wages to the workmen before the end of August, 1989.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal

Finance (Expenditure) Department

No. 6-2-85/Fin (Exp)

Read: (1) Govt. order No. 6-2-85-Fin (Exp.) dated 17-2-87.

(2) Govt. order No. 6/6/87-Fin (Exp.) dated 5-1-1988.

Sanction of the Government is hereby accorded to the continuation of the service of Shri N. C. H. R. Noronha, Jt. Director of Accounts on deputation to the Goa University for a further period of six months w.e.f. 2-7-1989 to 1-1-1990 on the same terms and condition as mentioned in the Government order cited at (1) above.

By order and in the name of the Governor of Goa.

K. M. Nambiar, Under Secretary (Finance Exp.)

Panaji, 2nd August, 1989.